



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,811	02/05/2004	Barry Algren	30679/39713	5957

4743 7590 12/30/2005

MARSHALL, GERSTEIN & BORUN LLP
233 S. WACKER DRIVE, SUITE 6300
SEARS TOWER
CHICAGO, IL 60606

EXAMINER

KOVACS, ARPAD F

ART UNIT PAPER NUMBER

3671

DATE MAILED: 12/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/772,811

Applicant(s)

ALGREN ET AL.

Examiner

Árpád Fábián Kovács

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 17 is objected to because of the following informalities: it appears that the “arcuate bottom wall” already presented in the amended claim 16. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-7, 9-14, 16-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Thorud et al (RE 33,726).

Thorud discloses:

cl. 1:

a drive housing (4) disposed on a body having a motor (engine 10) (fig 1);

a cavity disposed in the body (fig 1), having sides (walls 16) & at least partial semi-circular cross sectional shape (fig 1; col. 4, ln 58);

a paddle assembly having a shaft (38) & paddles disposed therefrom (32), that have a bottom wall (section 34) and a distal end (tip of ref impeller 30 as shown in fig 2 & 5) travels along the cavity, the bottom wall extends along an entire width of the paddle between side walls of the cavity & in a substantially planar manner (fig 2 & 5);

each paddle includes a pair of side walls (fig 5, ref. 36) with the bottom wall define an open region (fig 5);

a drive mechanism operatively connecting the motor and the shaft (fig 4);

Art Unit: 3671

cl. 2:

the bottom wall is arcuate extending outwardly from the shaft first away from and then toward the direction of the rotation (col. 5, ln 33-34);

cl. 3:

the region has a measurable volume (fig 5; col. 3, ln 13);

cl. 4:

the motor is electric (col. 4, ln 41, "other suitable power source" includes electric);

cl. 5:

a chute (80);

cl. 6:

the paddle, inherently, rotates between 350 rpm and 525 rpm;

cl. 7:

the body's choice of material is plastic (rubber, col. 7, ln 50-65, col. 8, ln 8);

cl. 9:

Art Unit: 3671

a drive housing (4) disposed on a body having a motor (engine 10) (fig 1);

a cavity disposed in the body (fig 1), having sides (walls 16) & at least partial semi-circular cross sectional shape (fig 1; col. 4, ln 58);

a paddle assembly having a shaft (38) & paddles disposed therefrom (32), that have a bottom wall (section 34) and a distal end (tip of ref impeller 30 as shown in fig 2 & 5) travels along the cavity, the bottom wall extends along an entire width of the paddle between side walls of the cavity & in a substantially planar manner (fig 2 & 5);

each paddle includes a pair of side walls (fig 5, ref. 36) with the bottom wall define an open region (fig 5);

a drive mechanism operatively connecting the motor and the shaft (fig 4);

the bottom wall is arcuate about an axis parallel to the shaft (col. 5, ln 33-34);

cl. 10:

the region has a measurable volume (fig 5; col. 3, ln 13);

cl. 11:

the motor is electric (col. 4, ln 41, "other suitable power source" includes electric);

cl. 12:

a chute (80);

cl. 13:

the paddle, inherently, rotates between 350 rpm and 525 rpm;

cl. 14:

the body's choice of material is plastic (rubber, col. 7, ln 50-65, col. 8, ln 8);

cl. 16, 17:

a drive housing (4) disposed on a body having a motor (engine 10) (fig 1);

a cavity disposed in the body (fig 1), having sides (walls 16) & at least partial semi-circular cross sectional shape (fig 1; col. 4, ln 58);

a paddle assembly having a shaft (38) & paddles disposed therefrom (32), that have a bottom wall (section 34) and a distal end (tip of ref impeller 30 as shown in fig 2 & 5) travels along the cavity, the bottom wall extends along an entire width of the paddle between side walls of the cavity & in a substantially planar manner (fig 2 & 5);

each paddle includes a pair of side walls (fig 5, ref. 36) with the bottom wall define an open region (fig 5);

a drive mechanism operatively connecting the motor and the shaft (fig 4);

Art Unit: 3671

the bottom wall is arcuate about an axis parallel to the shaft and extending outwardly from the shaft first away from and then toward the direction of the rotation (col. 5, ln 33-34);

a handle & at least one wheel (handle 8, wheel 6);

cl. 18:

the region has a measurable volume (fig 5; col. 3, ln 13);

cl. 19:

the motor is electric (col. 4, ln 41, "other suitable power source" includes electric);

cl. 20:

a chute (80);

cl. 21:

the paddle, inherently, rotates between 350 rpm and 525 rpm;

cl. 22:

the body's choice of material is plastic (rubber, col. 7, ln 50-65, col. 8, ln 8).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 8, 15, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thorud et al (RE 33,726), in view of Guillemette (3085832)

Thorud does not disclose the particular matter being grain.

Guillemette discloses that it has been found that a snow thrower it can be used for throwing or blowing other materials such as grain (col. 3, ln 36-40).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to realize the application of the Thorud's device, as taught by Guillemette, to move grain and/or snow.

Response to Arguments

6. Applicant's arguments with respect to claims 1-23 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Helliwell, UK 2178287.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Árpád Fábián Kovács whose telephone number is 571 272 6990. The examiner can normally be reached on Mo-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571 272 6998. The fax

Art Unit: 3671

phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Árpád Fábián Kovács
Primary Examiner
Art Unit 3671

ÁFK